IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1980
No.

COMMONWEALTH OF PENNSYLVANIA,
PENNSYLVANIA BOARD OF PROBATION AND PAROLE,
Petitioner

v.

PURCELL BRONSON, Respondent

ANSWER TO PETITION FOR WRIT OF CERTIORARI

John W. Packel, Assistant Defender,
Chief, Appeals Division
Benjamin Lerner, Defender
DEFENDER ASSOCIATION OF PHILADELPHIA

Defender Association of Philadelphia
121 North Broad Street
Philadelphia, Pennsylvania 19107

COUNTER STATEMENT OF QUESTION PRESENTED:

Did not the Pennsylvania Supreme Court properly exercise its supervisory powers under the Pennsylvania Constitution and its role as the final arbiter of state law in directing the Commonwealth Court of Pennsylvania to appoint counsel to represent Purcell Bronson on his appeal to the Commonwealth Court of Pennsylvania?

COUNTER STATEMENT OF THE CASE:

On April 6, 1978 the Pennsylvania Board of Probation and Parole conducted a hearing to revoke the parole of Respondent Purcell Bronson. This hearing was conducted some seven months after a new conviction of Mr. Bronson, which conviction was said to constitute the violation of parole. No witnesses were called at the hearing, and no substantial record of the proceedings was kept.

Respondent Purcell Bronson, acting pro se, sought review by the Commonwealth Court of Pennsylvania, alleging that the revocation proceedings were untimely under Pennsylvania law and regulations of the Pennsylvania Board of Probation and Parole. On October 27, 1978 the Commonwealth Court granted the Parole Board's motion for summary judgment and dismissed the appeal. A copy of the Commonwealth Court's opinion is attached to the Petition for Writ of Certiorari as Appendix "A."

Respondent Bronson, still unrepresented by counsel, subsequently filed a second Petition for Review in the same court, which appeal was dismissed on January 4, 1979. See Appendix "B" to the Parole Board's Petition for Writ of Certiorari.

Subsequently, Respondent Bronson petitioned the Supreme Court of Pennsylvania for review of the Commonwealth Court's decision. Ancillary to that appeal, Respondent Bronson on July 3, 1979 filed a petition with the Supreme Court of Pennsylvania requesting the appointment of counsel. On July 9, 1979 the Supreme Court remanded the petition to the Commonwealth Court for a decision on Respondent Bronson's right to counsel.

On July 16, 1979 the Commonwealth Court of Pennsylvania denied Respondent Bronson's request for the appointment of counsel and referred the matter back to the Supreme Court of Pennsylvania. The Commonwealth Court's memorandum order (attached to the Parole Board's Petition for Writ of Certiorari as Appendix "D") was grounded on the fact that Respondent Bronson's action was a "civil action" and therefore he was not entitled to counsel under Pennsylvania statutes and Rules of Appellate Procedure.

On March 20, 1980 the Supreme Court of Pennsylvania, having granted leave of the Defender Association of Philadelphia to participate as amicus curiae and heard arguments on the issue, held that in fact Respondent Bronson's appeal to the Commonwealth Court was criminal in nature and that under the Pennsylvania Constitution, statutes and regulations, Respondent Bronson was entitled to an attorney on his appeal from his revocation of parole.

The Pennsylvania Board of Probation and Parole now seeks this Court's review of that decision, claiming, mistakenly, that

it was grounded on Federal constitutional law.

ARGUMENT AGAINST GRANTING THE WRIT OF CERTIORARI

The Pennsylvania Supreme Court properly exercised its supervisory powers under the Pennsylvania Constitution and its role as the final arbiter of state law in directing the Commonwealth Court of Pennsylvania to appoint counsel to represent Purcell Bronson and consequently the instant case presents no substantial Federal question.

Although the Petition for Writ of Certiorari characterizes the Pennsylvania Supreme Court's decision as a constitutional one, there is nothing either in the record or in the opinion to support this claim. Indeed, a review of the opinion of the Pennsylvania Supreme Court in this case clearly discloses that the decision is based solely on questions of state law and procedure. The Parole Board's Petition for Writ of Certiorari claims that the Pennsylvania Supreme Court "relied exclusively on Douglas v. California, 372 U.S. 353 (1963), which held that an indigent criminal defendant has a federal right to appointed counsel on his first appeal as of right from his conviction." Although Douglas was cited by the Pennsylvania Supreme Court in its opinion (and is in fact the only arguable federal constitutional reference in the opinion), the Douglas cite was not a direct one but came only after the drawing of an analogy between allowing counsel on a direct appeal and allowing counsel on a parole revocation appeal. It is particularly significant that this citation in the text of the Supreme Court's opinion (Parole Board's Petition for Writ of

Certiorari, Appendix "F", R21a) is preceded by the signal "Cf." The uniform system of citation indicates that a "Cf." cite means that "cited authority supports a proposition different from that in text but sufficiently analogous to lend support. Literally, 'cf.' means 'compare.' 'Cf.' should not be used without an explanatory parenthetical."

Not only can it be said that the Pennsylvania Supreme Court's decision in this case is based on an adequate and independent non-federal ground, but in fact there is nothing in the opinion to even warrant the conclusion that it was compelled in part by any Federal constitutional principle.

In the absence of a significant Federal question, it is requested that this Court deny the Petition for Writ of Certiorari in the captioned matter.

CONCLUSION

For the reasons set forth above this Court should deny the Petition for Writ of Certiorari filed by the Pennsylvania Board of Probation and Parole.

Respectfully submitted,

JOHN W. PACKEL
BENJAMIN LERNER
DEFENDER ASSOCIATION OF PHILADELPH
Counsel for Purcell Bronson

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PURCELL BRONSON, Respondent

PETITION TO PROCEED IN FORMA PAUPERIS

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Respondent, Purcell Bronson, by his counsel, the Defender Association of Philadelphia, request permission to proceed in forma pauperis and represents:

1. Purcell Bronson is and has been for some years an inmate of the Pennsylvania State Correctional Institutions and is without any significant or substantial funds with which to prosecute this appeal.

2. In fact, the Supreme Court of Pennsylvania in the order which the Parole Board now seeks to have reviewed directed that counsel be appointed to represent Mr. Bronson because he was an indigent. To this day the Pennsylvania Board of Probation and Parole has failed to comply with that order of the Supreme Court of Pennsylvania, despite the fact that it was filed on March 20,1980.

3. The Defender Association of Philadelphia, which now seeks leave to proceed in forma pauperis on behalf of Respondent Bronson was permitted to enter its appearance and present argument on Mr. Bronson's behalf as amicus curiae in the Supreme Court of Pennsylvania. The Defender Association of Philadelphia is a private, non-profit corporation charged with the specific responsibility of protecting the interests of indigent criminal defendants in Philadelphia County, Pennsylvania.

4. On the failure of the State Parole Board to appoint counsel on behalf of Mr. Bronson as directed by the Supreme Court of Pennsylvania almost a year ago, the Defender Association of Philadelphia accepts its obligation to proceed with this matter but does request that it be permitted to proceed in forma pauperis.

WHEREFORE, this Court is requested to allow the Defender Association of Philadelphia to proceed in forma pauperis in its representation of Respondent Purcell Bronson.

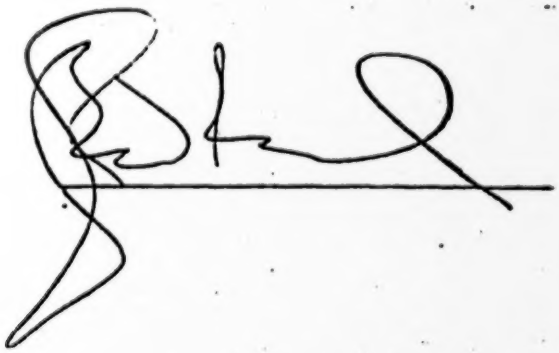
Respectfully submitted,

JOHN W. PACKEL
BENJAMIN LERNER
Defender Association of Philadelphia

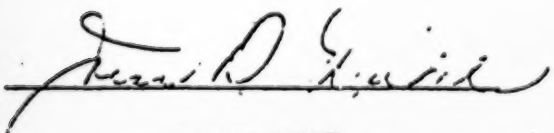
COMMONWEALTH OF PENNSYLVANIA :
: ss
COUNTY OF PHILADELPHIA :

AFFIDAVIT

John W. Packel, being duly sworn according to law, deposes and says that the facts set forth in the foregoing petition are true and correct to the best of his knowledge, information and belief.



Sworn to and subscribed
before me this 10 day
of March, 1981



JOANN D. WEIKEL
Notary Public, Phila., Phila. Co.
My Commission Expires Oct. 9, 1982